It was almost -- we used to call them rainbow type affairs where you can have a country in our news talk, and you can have the AC, and you can have our beautiful music station, and the advertiser was looking at what it cost him to deliver these audiences, not necessarily who got what of that pie.

Q How about in your review, I think you testified that you had reviewed 100 or more of these types of agreements in connection with your work, how common was it for these agreements to contain some kind of right to future ownership, an option to buy, an option to sell, a right of first refusal, something?

A It was very common because most people -- the biggest fear was we'd get this entity working great, and then the other guy is riding on my coat tails and I'm stuck with this arrangement forever. So there would usually be some system of puts and calls or options in there so that at some point either party could exercise their right to purchase the other.

Q What about a situation where a party would be precluded under FCC rules from acquiring another station, and would they still seek an option or a right to buy?

A Well, maybe a good analogy to that was some of the banks that were financing these transactions were not qualified to be FCC licensees because they might have had a foreign component, and they usually had some third party designee set up in the event that they needed to trigger a takeover of that particular credit and transfer a license to somebody else.

So options were fairly common, and there usually was some provision in the agreement that would deal with what to do if it could be that the original person was triggering this couldn't be the licensee.

Q Was there some expectation in the industry of rule change? Was there some belief that these options could be viable if they were not presently permissible?

A Right. Reflecting a little bit, in that particular time period everyone believed that since the FCC had allowed the joint operations to occur, they would ultimately be changing the ownership rules that would allow you to own multiple stations. And, of course, that did turn out to be true, first with the dual station and then finally with the telecommunications act change.

Q So when you -- I'd like you to focus in a little more on the frequency with which these types of rights occurred.

Would you say -- would you say if you looked at 100 joint sales agreements, how many of them would typically have options in them?

A Probably 99. And that one that didn't somebody just wouldn't agree to it. Everybody that went into those deals tried to have some sort of option in it.

Q You testified earlier about some of the back room functions that had been combined. In your experience, did you ever hear of a station, in effect, paying the bills of another station?

A Yes.

Q You did? You have heard of that?

A In terms of one of the markets I visited, two AM-FMs were together. They forked a NUCO or an operating venture that virtually handled all of the business functions of the stations out of a common checkbook, out of a common bookkeeping operation, and then used their accountants to separate back at the end of the year whose responsibility various areas were.

Q Well, isn't -- how do you deal with -- how do you deal in that situation or how was it dealt with in that situation if the station was, in effect, paying the bills and advancing funds for another?

A With receivables. I mean, all you do is -- the radio business is cyclical. January, February and March are generally pretty weak. The fourth quarter, the December holiday season, November through -- Thanksgiving through Christmas is always quite good. And so people anticipate pluses and minuses based on that revenue rises.

In fact, almost every owner in America has to put aside funds from the fourth quarter as they come into the first quarter to keep the station afloat during the second quarter when the money has not arrived from the lower months of January, February and March. So it's just -- it's an accounting function.

Q Have you, in your preparation for your testimony here today, have you seen the joint sales agreement that was entered into between Pathfinder and Booth Communications, that is Mass Media Bureau Exhibit 1?

A Yes.

Q And I'll show you this joint sales agreement.

(Pause.)

MR. BERNTHAL: I'm going to ask you just some general questions about it, so if everybody is having difficulty finding it, it may not be necessary.

BY MR. BERNTHAL:

Q Mr. Giddens, you have that joint sales agreement in front of you?

A Yes, sir. Let me put my glasses on.

Q Turn to page 14.

I've got mine on too, Mr. Giddens.

A Okay.

Q Is the form, the form and substance of this agreement, does it reflect something that was common in those days or is this an unusual joint sales agreement, in your experience?

A It looks like a lawyer-generated joint sales agreement that had all the possible legal points you could stick in into the "but if's." It probably was a little unwieldy.

Q When you say "lawyer generated," are many of these agreements lawyer generated?

A Well, because we were in new ground, almost all broadcaster were afraid to do anything without at least running it by their lawyer. And the second that happened, the lawyer wrote some document that would reflect whatever it was you asked. That's what this looks like.

Q You say that the broadcaster were afraid. Aren't there rules governing this sort of thing?

A They were trying with the input of the staff, et cetera, to follow the rules and do what appeared to give that arms length difference between the two licensees or the ultimate control.

Q Well, were there specific rules that governed joint sales agreements in the early nineties?

A That was the unfortunate part. The policies of the Commission of the past were not altered to reflect the new reality of the early nineties, so everybody was operating on the basis that we believe this is okay. The staffer that I talked to said it's okay. Let's reflect that in the document.

Q In your experience, were these kind of agreements, in smaller market stations, were these kinds of agreements followed carefully? Were they implemented carefully by the parties?

A They were well-intention documents written by the lawyers, but as a practical matter, no.

Q Why not?

A Because it became too unwieldy. If you did everything according exactly to the document, nothing would happen on the action end.

Q If you will look at page 3 of this agreement, there is a reference to a management committee.

Do you see that? Section 3.1, it says, "The venture shall be managed by a management committee which will have four members," referring to the joint venture.

A That would appear to be a lawyer's concept of how you could have a generic management group, apparently appointed by both owners. That would be very rare if you could get four people to determine what color to paint the lobby.

Q In your experience in markets, again in roughly the size of 150, have you ever seen a radio station joint sales operation which actually utilized a management committee?

A No.

Q Well, did stations try to follow these agreements or not?

A I think everybody tried, but as they got into it, if there was one guy standing there making the decision on whether we go sell the Coke account today or not, they weren't going to wait while that buyer was in town to see if they could call three or four other people and have a consensus on that.

Q Have you seen the Pathfinder/Hicks accounting agreement? This is Mass Media Bureau Exhibit 1 at page 44, in preparation for your testimony?

A Yes.

Q Would you describe what you perceive to be the -- I mean, the differences here seem fairly dramatic. We have an 18-page document and a one-page document.

Can you explain why there is so much of a difference in these two documents based on what you know about how radio stations typically operated in the 1990s?

A Well, this was just delineating one function basically, which was the general accounting, accounts payable, preparation of payroll checks. These type agreements could have been made to one of the outside vendors that does payroll for a company too. Not Pitney

Bowes, but there are companies across the country that provide payroll services and accounting on a per month, monthly basis. A lot of stations use their accounting firms because it's cheaper to pay them than it is to have their own employee.

Q And, in your experience, was it common for one station to provide these services for another?

A It was in that period.

Q Payroll services as well?

A If you had a competent accounting person or a bookkeeper, it could be. That was an area where it's all back room, and since there weren't a lot of changes in salary during that period of time, as long as it was confidentially done it didn't make much difference.

Q Now, would one station ever prepare, for example, government reports, FCC reports for another?

A The same. I mean, a lot of stations were sending all these documents to their lawyers to be done, and then finally some thought it would be cheaper if they just filled them in and sent one packet to the lawyers for dissemination.

Q In your experience again, would you see stations utilizing common bank accounts to discharge these obligations?

A Well, one of the reasons that would occur was in the joint sales agreements or the joint operating agreements, and sometimes in the LMAs, when one group was selling all of the stations all the money came into that one group. If Sally Smith was a sales representative of four stations, that advertiser saw her as the entity that she was -- that he was dealing with, and he would write the check to whoever she represented, and that didn't usually -- it didn't usually mean four different call letters. It meant to, you know, new station group or radio sales of, you know, Florida or whatever it was.

Q In your experience, was the Commission aware of these practices?

A I believe so. It became -- this was an interesting area. All the conventions that occurred people would try to query Roy Smith and others over what was and what wasn't permissible, and the answers were usually, well, within the guidelines of the Commission, or as close as possible to what we believe that to be. They were never exactly black and white.

Q When you said "Roy Smith," did you mean --

A Stewart.

Q Stewart.

How did stations typically deal with the allocation of cost and expense when they used common employees?

A Well, generally, based on what they did. If it were an easy function, let's say it was a bookkeeper doing two payrolls, then it was generally done on a 50/50 basis. If it were an employee who might have done more for one than another -- let's say, for instance, there was an AM-FM and an FM combination, FM owned by one party and an FM by another. Then the engineer's salary would be slight pro rata more on the AM-FM than it would be just an FM because he's have two stations versus one.

Q Are you aware, Mr. Giddens, in this case that there were put and call arrangements between Pathfinder Communications and Hicks Broadcasting?

A Yes.

Q And excuse me, I misspoke.

Between -- the actual puts and calls were between the investors of Hicks Broadcasting. I misspoke. Excuse me.

If you'll look at pages 42 and 43 of Mass Media Bureau Exhibit No. 1, you will see the arrangement among the shareholders of Hicks Broadcasting.

Do you see the put provision in paragraph two?

Are you --

A Yes.

Q Have you found it? Okay.

And my question to you is this: You've testified that puts, calls and options were in virtually in all these kinds of arrangements, but how common was it for there to be a put by a majority shareholder to minority shareholders?

A These type documents generally followed the economics. The stronger money provider in each of these cases almost always would have the put capability, as well as the other. But it was very commonplace that these were not a marriage of equals. Generally, the reason they were done is that one party had better financing available to them than the other, more equity.

Q So, in your experience, you're saying that majority shareholders might actually have the right to put their interest in minority shareholders, that you have seen this sort of arrangement before?

A I think that there were a lot of different arrangements made. Each document was based on a set of facts at that time in place and the people involved, so every possibility was there.

Q The formula for the put and the call, which appears at page 93, 93, Exhibit 3. I believe, according to my notes, it's Exhibit 3, page 93. But before everybody has to reach for it, the formula, I think I can fairly describe as a five times cash flow formula for either a put or a call, and it's at page 93 of the Bureau's Exhibit 3. It's set forth under 7.4(b), call provision, and I hope you're looking at the right place because I'm a little confused here myself, but it's --

MR. BERNTHAL: Can you help him, please?

(Pause.)

JUDGE CHACHKIN: What pages?

MR. BERNTHAL: Ninety-three of Exhibit 3, Bureau Exhibit 3, Your Honor.

JUDGE CHACHKIN: What are you asking about, which provision?

MR. BERNTHAL: 7.4(b), Your Honor.

JUDGE CHACHKIN: All right.

BY MR. BERNTHAL:

Q Have you read that, Mr. Giddens?

A Just a second.

Q Sorry.

(Witness reviews document.)

A Okay.

Q First of all, in general, when you had options in the -- let's say roughly in this time frame, when you had options either to put or call interests in a radio station, what was the general range for -- what was the range or scope of these options in terms of value, generally speaking?

A Well, the banks who had been lending at three to four and a half times trailing cash flow had dried up, and so the multiples dropped to very low levels in terms of how you value stations.

This five times in here is probably reflective, roughly, of what on an economic model the valuation would have been.

Q Now, you refer to multiples.

Is that generally the way station -- interest in stations get valued is on multiples of cash flow?

A Well, we have sort of an interesting scenario. When stations before the economics changed, stations traded for like one, one and a half times their gross. But then as the banks became involved, they were interested on repayment, so the gross number didn't mean anything. They wanted to know what the net available cash flow would be, and they wanted to lend at slightly less than what they thought the value of the station would be, and the lending was in this three to four and a half range, and then they would stack on subdebt and whatnot to make a purchase. That range, a multiple is of the cash flow of that particular station, if there is any.

Q And in your experience over the years, how widely has that multiple ranged due to market conditions?

A Well, as an example, when the pubic market was, it was at its height, we actually saw transactions go as high as 20 times, but that money was kind of loose and banks weren't supporting past their four and a half that they were before.

Q And if you look back at the -- in Exhibit 1 at the agreement we were looking at before, you notice that there is also a guarantee provision in which -- I believe it's paragraph number three, isn't it? Yes.

How common was that sort of provision?

I mean, we are talking here about a provision that has minority shareholders, in effect, identifying and guaranteeing return to a majority shareholder. Have you seen that sort of thing before?

A I think, again, all this was based on the economic reality at that time and place. Sometimes great managers and great operators just didn't have the funding that some of their investors or minority shareholders had, and as a way to keep some sort of perspective or balance in those transactions those people with the equity would put a provision in, since they were kind of on the hook for it, that they were able to cover these differences.

JUDGE CHACHKIN: Are you aware that this was a seller-financed transaction? Banks were not involved?

THE WITNESS: Yes.

JUDGE CHACHKIN: Does that change your answers any --

THE WITNESS: Well --

JUDGE CHACHKIN: -- in these provisions?

THE WITNESS: -- the sellers were probably as, if not more, nervous than banks about getting paid. And so I'm surprised there is no blood signing in here or whatnot because most of the seller financing was really tough, and they were as difficult to get covered because they were selling an asset that was important to them. And if it was gone, they had no recovery, whereas a bank, it's just another financial transaction.

BY MR. BERNTHAL:

Q Mr. Giddens, in your experience, how common is it in this era, I'm speaking of 1990 and forwards when we have these common kinds of operations, how common is it for one licensee to have a role in selecting a licensee of another station in the market?

A Give me the time reference again.

Q Well, I'm specifically talking about the period of operative facts here. Let's say from 1990-91. We've been talking almost exclusively about this era in which the Commission began permitting less than arms length relationship between stations.

And my question is: In this era, and really, I suppose, coming forward until today, how common is it for one licensee to have a role in the identification and selection of another licensee for a station in the market?

A Humm, that's tough.

Today, it's much more commonplace because even in television, which is supposed to not have any of this, there is convenient situations where one licensee who may operate some successful stations wants to make sure that their competitors aren't too competitive.

This time was more experimental, and most of these were driven by economics, where people were concerned about getting paid. The banks were gone, and they wanted to make sure that whoever they dealt with was somebody they felt would pay them.

Q Well, if a -- are you aware of any situations in which a licensee might encourage one of its own employees to become a licensee across the street?

A Without naming names, in recent history one could identify mothers, sons, daughters, you know, the wives situation, I believe, only got covered in the last few years, but very common to have sons and brothers and whatnot as a licensee.

Q Well, do you believe the Commission is aware of this practice?

A They have to be because, in particular, one large television company's mother operates a competitive division.

Q Well, how do licensees -- real world now -- how do licensees maintain independence in light of that kind of practice?

A I think the form and function of each operation still meets the FCC requirements. It's just as a practical matter would you want to take on your mother and beat her or would you tend to focus your attention on somebody who wasn't family-related, for instance.

Q Well, if you had a radio station in a market and there is a station across the street that you want to LMA or have a JSA relationship with, and you encourage your mother to buy that station, to use your example, how does your mother maintain a licensee independence?

A Well, she'd have to have her own management and follow the rules of the FCC in terms of the ultimate control issue. But you go all the way back to when NBC was red and blue networks, and one of those became ABC because of divestiture. There are ways to be fully competitive and still be owned in a family or other relationship manner.

Q You're aware that at one time there was a -- let me ask this a different way.

What is the common practice in the industry, the trading of stations, I gather, has increased at a fairly dramatic rate over the years; is that correct?

A Very much so. All available -- when financing is up, trading is higher.

Q Right. So, in your experience, how common is it for someone to undertake the obligations of a licensee with a plan and intention for that to be less than a permanent relationship?

A When the three-year rule, holding rule went away from the FCC, then, unfortunately, broadcast properties in many cases became trading commodities. And we saw so many situations where actual sales contracts were sold to potential buyer A, and before he even got to close, he flipped that contract to potential buyer B for additional monies. And the FCC had to scramble and approve the second set of transactions to cover the first.

JUDGE CHACHKIN: Are you saying that the Commission is no longer concerned about whether you have an intention to own and operate a station?

THE WITNESS: I'm not qualified to speak to whether the FCC has changed its attitude or rules. It just appears that they are less concerned once somebody is qualified as a licensee as to what their ultimate intent is.

JUDGE CHACHKIN: What do you mean? I'm not quite sure what --

THE WITNESS: Well, let's go back historically. In the fifties and sixties, in the business people basically bought stations to hold and operate and be the licensee forever more. And as the case was with Westinghouse and CBS and a number of owners, they kept stations for tremendous long periods of time. Most of them even own they today.

But when they became such important financial entities for lack of a better term, then you have the transactions that occurred to sell blocks of stations for a lot of money, and those people who were holding them thought less about how long they were going to hold them than what they were going to get for them if they sold them.

The number of transactions speaks for itself as you look past about '92, '93, 94. As the money came back into the industry, we have trading numbers that were staggering; I mean, to the point that as a broker just trying to keep up with it, I spent my -- you know, my entire year on the road trying to go from one buyer and one seller to make sure that all the stuff is sorted out, and I'm but one of many who do this.

When the economy allows it, the value of broadcast properties has reached a point now where how long you keep them is probably less a function of your intent than what someone offers you, and you value whether you can have run at it at the level of which they've offered you money.

BY MR. BERNTHAL:

Q Well, we were speaking earlier, however, about a down period in the economy when all these kind of arrangements began.

A In the early nineties, it was quite the opposite.

We've had that economic crash, if you will. The banks had left the industry and it was pretty upside down, and it was overpromise versus performance in terms of financial.

Q So in that environment how common would it be for someone to undertake the obligation s of a licensee and plan some sort of an exit strategy at the same time?

A Well, generally, it's like buying into a back stock market. You try to make a good deal, but you also figure out where your floor is if you have to come out, and that was quite a concern since there were no easy run to the bank scenarios to get financed. A lot of these deals, when people bought them, they tried to be as conservative as possible in case they had to get out of them. So it's very common, very common.

MR. BERNTHAL: Your Honor, I have no other questions.

JUDGE CHACHKIN: Does Hicks have any questions?

MR. HALL: No, Your Honor.

JUDGE CHACHKIN: The Bureau?

MR. SHOOK: Your Honor, we have a few.

JUDGE CHACHKIN: Go ahead.

CROSS-EXAMINATION

BY MR. SHOOK:

Q Mr. Giddens, first of all, my name is James Shook from the Mass Media Bureau. I'm only have a few questions for you. Famous last words, right.

You had mentioned in response to questions that you're familiar with some situations where stations are working in combinations where some stations are paying for the bills of others.

Did I hear that right?

A Correct.

Q Now, how many such situations, roughly, are you familiar with?

A Well, remember what I do. I'm a broker, and therefore most of what I see is the ultimate financial documents, leases, contracts, et cetera, that go with a transaction.

In my role back in the nineties, as a hand holder of banks, I would go in and visit with the station operators and review what they were doing and what they told the banks they do, and it was in that context that I saw things that, you know, had sort of evolved as practical applications that may not necessarily reflect in documents that were even seen by the banks or by the FCC.

One instance that I think about in upstate New York, they had formed a NUCO to operate a sales and business function operation for four stations; two AM-FMs; one was weaker than the other, so the idea was the weaker guy was getting the expertise of the stronger guy's people. And they started out with great intent of keeping them very, very separate, and as it evolved every time I'd hear a little bit more about it, well, we brought the engineer in now, and we've brought the accounting in, and we've brought the traffic operation in. The only thing they did was bicycled the production from on site to the two different operations.

So I've seen it. I mean, it's not something that's theoretical, and I saw more than one, but not as a broker; when I was in looking at the stations as evaluator for banks.

Q Maybe I didn't make myself very clear with my question. What I was -- what I was trying to get at was the number of situations you saw where station A would write the checks for station B, and then at a later point there would be some, you know, accounting understanding that would ultimately allocate who was responsible for what?

JUDGE CHACHKIN: You're talking about writing all the checks, not just sales checks; all the checks.

THE WITNESS: But you have to follow the flow of money because there is no other source of radio station or television station generally to get money other than it's through sales.

I'd say it was probably more common than anybody would believe, particularly in the LMA and JSA situations.

Everybody would start out doing it, you know, this is separate, this is separate, and then it would evolve because you were dealing with one set of facts, one group of people, one room generally, who was providing all the financial expertise for the stations.

BY MR. SHOOK:

Q I'm not thinking so much of financial expertise as I am thinking about the cost of money in the sense that if one station pays the bills of the other station, let's just leave it at two stations.

A Um-hmm.

Q One station pays the bills of the other, and the accounting eventually determines who is responsible for what. Isn't there still an initial cost of the money that is being advanced by the station that is paying the bills?

And if there is, how did that get squared away between the two stations?

A Well, as I said earlier, and I probably didn't make myself clear, in almost all broadcast operations, the 12 months are not equal. The 12 months' expenses for power, for rent, et cetera, may be. But the income ebbs and flows with the seasons. And because of that most stations as they start out a joint venture of some sort, each will contribute some capital or some cover of what we call the float.

In other words, if you run an ad with me, you know, you won't pay me for 30 days or 60 days, I would hope sooner, you know, but that's what it would be. And so that money has got to be there to pay the bills during that period of time.

I don't find it unusual to put the money in an account like that because at the end of the year, except for you quarterly distributions for taxes or whatever the formula required in terms of one party's ability to get money over a certain level, these were very much work in progress, and so there was no models to follow. And if suddenly these things started making a lot of money, I'm sure each owner would be saying, "I'd like my share of some money out."

But in the beginning, these were basically taking at least one of the stations that was extremely weak and trying to profit up with another.

Q Well, a scenario that I have in mind is that we have -- say we have two stations together, and one is stronger financially than the other, and that stronger station is paying the bills of the other. And as I said, there was an accounting arrangement that exists, and ultimately, you know, allocates the expenses between the two.

What, in your experience, have you seen in terms of how much money one station would advance to pay for the bills of the other?

A I think it depends on the situation. The problem, and I think I know where you may be going with this, is in the smaller towns every relationship with a client generally also may have a relationship with a payable too. Like the hardware store who supplies the door locks for station A and station B may also be an advertiser, and they only look at it -- if one of the stations is paying their bills back to them and the other one is not, they would punish both. And so it became sort of a wrapped up situation where everybody had to kind of stay on an even keel, keep the bills paid and the monies coming in, whether it was always the best situation for each separate owner or not, because they would be taken to task for not supporting the entity if one paid their bills and one did not.

Q Well, we may be communicating a little bit here, and it may be just I'm not getting my idea across.

You said you had taken a look at the joint sales agreement that existed between Booth and Pathfinder. There is a part I want to refer you to. It appears on Mass Media Bureau Exhibit 1, page 18. It's Section 4.4(a).

JUDGE CHACHKIN: It's page 18?

MR. SHOOK: Yes, sir.

//

BY MR. SHOOK:

Q Now, if you could just read that to yourself and then I'll ask a question when you're finished.

(Witness reviews document.)

A Okay.

Q Now, my focus is really on the last two sentences, and can you help me understand what is meant or, you know, what is supposed to happen here if it turns out that Booth's expenses exceed the revenues by more than $5,000 in any given month? What is supposed to happen here?

A You know, it speaks to an offset of the above, so that Pathfinder would be reimbursed if the amount of money was over that $5,000 cap.

I don't -- since I wasn't privy to how this was put together, I'm sure someone allocated what they thought the expenses would be on a monthly basis, and they were using some sort of receivable balance in the books to anticipate who would get money when based on the cost level.

Q Is the idea that is reflected in here one that as a general proposition the expenses and the revenues are going to be within $5,000 of each other in most months?

A Not unless someone had pre-allocated that there was going to be a $60,000 a year spread on a annual basis. I think that was just somebody's attempt to quantify a relationship.

Q Well, now, the way the last sentence reads here, and if I'm misreading this or misunderstanding, perhaps you can help me. The way I -- the way I see this last sentence it appears to me that if Booth's expenses are say $10,000 over the revenue, then the $5,000 of that is going to be offset in accordance with the rest of the paragraph, and Booth is supposed to reimburse Pathfinder for the remaining $5,000.

Is that how you read that?

A In a literal sense, yes. I don't know all the particulars.

Q Now, would there be any particular reason, in your experience, why something like this wouldn't be followed --

A Yeah.

Q -- or the wording that appears here would be ignored?

A If there were a receivable build up, in other words, let's say something happened that was out of the ordinary, the transmitter blew up or they had to buy a new used car or something that costs that wasn't anticipated in the original plan, there could be a receivable or a deficit potential that was greater than in this document that would cause these numbers not to be applicable.

Everybody draw up a budget, so like your household budget on known expenses, fixed expenses. But if something alters, the furnace blows up or whatever, then you've got to add that in and that could create an immediate need for cash, which could simply be handled as a receivable until it's paid through. That's why I say I;m sure this was somebody's model of how to do it on a perfect year-round basis, but as a practical matter it would be very hard to determine if that would work.

Q Now, when you say handled as a receivable, does that mean, let's say to use the example of a transmitter, that Booth's transmitter blows up and all of a sudden it's got, you know, expenses that dramatically exceed the revenues that were anticipated for the given month in question, way over $5,000.

So according to this, $5,000, "this" meaning the agreement, the first $5,000 would simply be offset against the next month's revenues.

Now, what I'm getting at here is what happens to the expense that is now being incurred. Are you saying that Pathfinder is simply going to treat the cost of Booth's transmitter as a receivable on its books?

A If they believed that during the course of the year the cash flow of the entity would be sufficient that they would get paid that receivable back in a timely manner, probably so.

Q In a timely manner.

Well, what would be the -- what would be appropriate from a timely -- you know, what are we talking about in terms of a timely manner?

A Twelve months.

Q A 12-month period?

A If these documents are based on a annualized review, if, for instance, no matter how well intention, if a lawyer drew this and it was perfect, yet it didn't work, at the end of that year somebody is going to be down renegotiating how it actually is implemented or worried about it a lot.

Q Well, now, the carrying -- let's pose the cost of the new transmitter at $100,000, because I think that figure had come up, not for a transmitter but just -- so we have a $100,000 expense. The first $5,000 is going to be offset against next month's revenue, and the remaining $95,000 is going to be carried as a receivable?

A I would think so.

Q And that -- and in carrying that as a receivable, I take it that Pathfinder would be in a way incurring the expense of the cost of that money by not collecting it immediately from Booth.

A In many of these ventures where you were hoping that the entity would be wildly successful and award you in terms of distribution of profit, you had to seed it with something, and, unfortunately, some of these costs were shaken out in the initial period of these agreements where maybe the lesser station or the station that was not as strong had not upgraded its equipment or had not been maintaining it, and therefore the probability of something like this happening may be, hopefully not at $100,000 level, but at a pretty good level was very much there until the whole thing worked and began to go forward.

Remember, this was in a period where there hadn't been any of these things before. The first one I ever heard of was in Austin, Texas, back in the '91-92 period, and it was revolutionary. But we kept asking where is the paperwork? How does this work? How does anybody know whether it's a good deal or not? And everybody would say, well, we're not sure. We're just working on it.

And I think that's why I'm saying this document, no matter how well intended, had it been a disaster for one party or the other, somebody would have been talking about whether this agreement was worth staying with.

Q Well, in the example that we're talking about there, isn't it the case then that Pathfinder is acting as a de facto bank to Booth?

A No, not really.

Q Wouldn't it, in the ordinary course of business, require Booth to go out and borrow the money needed or to somehow raise the money needed in order to pay for the transmitter?

A That would be an option.

Q I mean, if Booth were operating the station by itself, it would necessarily have to do that?

A My guess is that Booth had basically ceded over the operation of the station to the new entity, and didn't really want to hear about their problems of transmitter and whatnot, so they just said, you know, you're going to make money on this thing, fix it in the short term. You work it out however you want to. That would be my guess.

Q I guess I'm not following you somehow.

A The unfortunate part in looking at any legal document is if you take it on its components, then your assessment may mean one thing. As a practical matter, when you're trying to run a small business, you do whatever it takes to make it work, and if it means leaving a little money on the table a little bit longer before you get it back, that's fairly common.

Q So, in other words, the example that we've described would be a situation where the reality was different from what the document provided in terms of how it was supposed to work?

A That's what I think.

Q Now, how would the -- how would the FCC be able to make a determination as to whether such is appropriate if what we have received as a document and what we haven't received is an actual description of what's taking place?

A I don't --

MR. BERNTHAL: Your Honor, could I just object because as a factual matter this document was not required to be submitted and it wasn't submitted in this case, so I'm not sure it's a fair question.

JUDGE CHACHKIN: Well, I'll overrule the objection. The witness has answered that he doesn't know.

BY MR. SHOOK:

Q Now, I think you also testified, Mr. Giddens, that, you know, you're aware of some instances where there were common bank accounts involved in more than one radio station.

Do I recall that correct?

A That's correct.

Q With respect to such common bank accounts, what knowledge do you have in terms of the Commission's awareness that common bank accounts existed in the situations in which they existed?

A I don't know if that much specificity was ever -- was ever brought up or asked for by the Commission itself. I don't know that it wasn't, but I've never heard that.

One of the problems is that in making policies as all regulatory boards do, they set a general tone, but then